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Customer Number

PATENT
Docket No.: 56466US002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

KRISTEN J. GODBEY, STEVEN S.
KANTNER and MATTHEW T. SCHOLZ

Group Art Unit: 1615

Confirmation No. 9149

Serial No.: 09/854,824
Filed: May 14, 2001

Examiner: H. Ahmed

For: SYSTEM FOR DELIVERING
COSMETICS AND
PHARMACEUTICALS

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PRE-APPEAL BRIEF REQUEST FOR REVIEWMail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants hereby request a Panel Review of the final rejection dated December 7, 2006 in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

Status of the Claims

The pending claims 1-39 stand rejected.

Review is requested for the following reasons:

Claims 1-39 are rejected under 35 U.S.C. § 103(a) as being obvious over USPN 4,750,482 to Sieverding in view of USPN 5,028,435 to Katz. The Examiner cites Sieverding for the disclosure of a "hydrophilic, elastomeric, pressure-sensitive

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adhesive which may be used as a coating on a supportive web-like substrate for delivering an active agent. . .” The Examiner states that Sieverding “differs from the instant case only in that it does not teach use of a protein and a carbohydrate.”

As amended during prosecution, Applicants’ claims require a cold-water soluble or cold-water dispersible adhesive and a cold-water soluble or cold-water dispersible carrier layer. As discussed in Applicants’ Specification on page 4, lines 20-25, page 7, lines 21-27, and page 10, lines 26-27, “cold-water soluble” or “cold-water dispersible” means that the carrier or adhesive “is dissolved or dispersed, as the case may be, in water or other aqueous solution” at a temperature less than about 40 deg C in less than about two minutes.

The materials disclosed in Sieverding fail to teach or suggest a cold-water soluble or cold-water dispersible adhesive and a cold-water soluble or cold-water dispersible carrier layer for at least three reasons. First, Sieverding fails to teach or suggest a water-soluble or water-dispersible adhesive. In contrast to the Office Action’s characterization, Sieverding specifies that the adhesive must be water-insoluble. The Examiner states that “hydrophilic” is functionally equivalent to “water-dispersible.” A “hydrophilic” material does not equate to a “dispersible” material. For example, one skilled in the art could treat the surface of a piece of plastic to make it hydrophilic by the standard definition, but that does not make the piece of plastic “water-dispersible”. Even assuming for the purposes of argument that hydrophilic can be functionally equivalent to water-dispersible as alleged by the Examiner (which Applicants’ dispute), any interpretation of Sieverding to equate “hydrophilic” with “water-dispersible” ignores the teachings of Sieverding in both its description and its applications.

The Examiner argues that the dictionary definition of “disperse” as “to cause to become spread widely” or “to distribute . . . more or less evenly throughout a medium” is the controlling definition to be used in interpreting Applicants’ claims. However, this appears to ignore Applicants’ own definition as given above.

Further, the Examiner suggests that the dispersion by absorption of water in the hydrophilic, elastomeric, pressure-sensitive adhesive materials of Sieverding is equivalent to the dispersion of applicants’ adhesive and carrier layers in water. Applicants respectfully assert that this is an erroneous factual conclusion. This

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interpretation of "dispersible" as used in Applicants' claims reads out the definition of the term "cold-water dispersible" referenced above.

Sieverding is concerned with a pressure sensitive adhesive that is "a soft, yet strong, rubber-like solid" that "absorbs moisture that cannot be squeezed out." See col. 5, lines 57-58; col. 6 lines 14. This is clearly NOT an adhesive that does the opposite, e.g., dissolves, solubilizes or disperses in water. Rather, Seiverding's adhesive is structure that will absorb fluid and not break apart even if squeezed.

Significantly, Sieverding specifies that the adhesive is "water-insoluble" (emphasis added). See, e.g., Abstract; col. 1, line 12; col. 5, line 54; col. 6, lines 56 and 67; col. 7, line 13 and 61. As stated in Sieverding, "*[t]he cross-linked polymer of the adhesive is water-insoluble and has a three-dimensional matrix.*" Col. 7, line 20; see also col. 10, lines 61-68; col. 11, 38-42; col. 14, 21-23; claim 1. The three dimensional network is formed by extensive crosslinking which is preferably done by radiation as exemplified in the Examples. Thus, the adhesive is clearly a crosslinked three dimensional polymer network as discussed at col. 6, lines 58 and 62; col. 7, line 15; col. 9, lines 31 and 42; and NOT an adhesive dispersible in water.

Seiverding further provides that the adhesive functions as a **bacterial barrier**. Please see col. 8, lines 37-39; col. 17, lines 47-48. A bacterial barrier should remain intact to function as a barrier. This would NOT be possible with an adhesive system that dissolved or dispersed in water.

Second, Sieverding fails to teach two layers, much less two cold-water soluble or cold-water dispersible layers. Thus, Sieverding fails to disclose both a water soluble/dispersible adhesive and a water-soluble/dispersable carrier, each capable of dissolving or dispersing once in contact with water. At most, Seiverding discusses a web-like substrate that can be a gauze or nonwoven fabric (see col. 17, line 12), or polystyrene (col. 16, line 55). If compared to any layer for purposes of argument, the web-like substrate is more appropriately considered equivalent to the support layer described in Applicants' specification.

Finally, Sieverding fails to disclose any construction of a device in which a support layer is attached to a carrier on the surface opposite the adhesive layer, i.e. a construction of 1) support layer, 2) carrier, and 3) adhesive.

The Examiner acknowledges that Sieverding fails to teach proteins and carbohydrates but relies on Katz for that disclosure. As discussed above, Sieverding at

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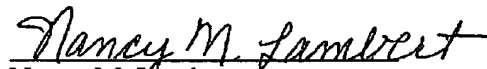
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a minimum fails to disclose either a "cold-water soluble or cold-water dispersible carrier" or a "cold-water soluble or cold-water dispersible adhesive." Katz further fails to cure the deficiencies of Sieverding because Katz fails to teach or disclose a cold-water soluble/water dispersible carrier layer, cold-water soluble/water dispersible adhesive layer, and a support layer. Further, neither reference provides any motivation to modify the references to achieve the combination as claimed by Applicants. Thus, the combination of Sieverding and Katz fails to teach all elements of the present invention. Applicants request that the rejections under 35 U.S.C. § 103(a) be withdrawn.

Summary

For at least the foregoing reasons, Appellants respectfully request that the Panel review and reverse the final rejection of claims 1-39 in the above-identified application, and that Panel Decision allowing the application on the existing claims be issued.

Respectfully submitted,


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